APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 02-13885

ARTHUR GEDDES,
Plaintiff-Appellant,

versus

AMERICAN AIRLINES, INC., TERRY MEENAN,
Defendants-Appellees.

February 21, 2003, Decided

Appeal from the United States District Court
for the Southern District of Florida.
D. C. Docket No. 02-20673-CV-ASG.

Before BARKETT and WILSON, *Circuit Judges*, and LIMBAUGH *, *District Judge*.

OPINION

BARKETT, *Circuit Judge*:

Arthur Geddes, an aircraft technician, originally filed a complaint in Florida state court against his employer American Airlines ("American") claiming damages resulting from the torts of defamation, negligence, and negligent supervision and retention. American, a Texas corporation,

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* Honorable Stephen N. Limbaugh, United States District Judge for the Eastern District of Missouri, sitting by designation.

removed the case to federal district court, asserting that federal law completely preempted Geddes's state law tort claims, and thus, removal was appropriate on the basis of federal question jurisdiction.[1] Geddes challenged this jurisdictional ground, moving to remand the case back to state court. The district court denied Geddes's motion, finding that the Railway Labor Act ("RLA"), 45 U.S.C. § 184 (1986), completely preempted the state tort claims, and it applied the RLA to dismiss the complaint. Geddes, arguing that removal was improper, appeals from the denial of his motion to remand the case to state court and from the dismissal of his complaint.

BACKGROUND

Geddes's complaint alleges that, during his employment at Miami International Airport, a co-worker reported to management that Geddes had threatened him with violence. American began an investigation of Geddes's alleged misconduct and temporarily suspended him. The complaint alleges that American knew the accusation was false but nonetheless published it and failed to stop the spread of false statements related to it.

American maintains that they acted in accordance with the requirements of the collective bargaining agreement ("Agreement") between American and the Transport Workers Union of America. The Agreement, concerning "rates of pay, rules, and working conditions," was made under and is governed by the RLA, 45 U.S.C. §§ 152, First, and 184. The RLA establishes a mandatory framework for the resolution of "minor disputes" over the interpretation of collective bargaining

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[1] American also asserted diversity jurisdiction. In response, Geddes amended his complaint to include Florida resident Terry Meenan, a human resources manager at American, and argued that by adding a Florida resident, diversity jurisdiction was eliminated. The district court found no diversity jurisdiction, and that finding is not an issue raised on appeal.

agreements, see *Brotherhood of R.R. Trainmen v. Chicago River & Ind. R.R. Co.*, 353 U.S. 30, 33, 1 L. Ed. 2d 622, 77 S. Ct. 635 (1957), reserving their adjudication exclusively to boards of adjustment. American argued that because the evaluation and adjudication of Geddes's claims would require an interpretation of the Agreement, the complaint in effect raises a federal question, providing the basis for removal to the federal court. American then argued that the federal district court should dismiss the complaint because Geddes's allegations constituted "minor disputes" under the Agreement, and the RLA requires that minor disputes be sent to arbitration. The district court agreed with American and dismissed Geddes's claims. This appeal followed.

On appeal, Geddes argues that removal under 28 U.S.C. § 1441 [2] was improper because: (1) the doctrine of complete preemption does not apply to the Railway Labor Act, and thus the district court lacks jurisdiction over his claims; and (2) even if complete preemption does apply to the RLA, the RLA does not apply to his claims because they lie outside of the collective bargaining agreement governing his employment and do not implicate any interpretation or application of the agreement.

STANDARD OF REVIEW

The issue before us is whether the district court correctly determined that Geddes's claims are completely preempted by the RLA, thus giving the district court jurisdiction. Whether a district court may exercise jurisdiction over a case based upon complete preemption is a question of law that this Court reviews de novo. *BLAB T.V. of Mobile, Inc. v. Comcast Cable Communications, Inc.*, 182 F.3d 851, 854 (11th Cir. 1999).

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[2] 28 U.S.C. § 1441(a) provides that a defendant may remove any civil action filed in state court to a federal court if the federal court has original jurisdiction over the action, which under 28 U.S.C. § 1441(b) may arise from the diversity of the parties or a federal question.

DISCUSSION

I

In order to determine whether removal to federal court was proper on the grounds that Geddes's claim was completely preempted by federal law, we must again clarify the differences between "complete" preemption and "ordinary" preemption. See *BLAB T.V.*, 182 F.3d at 854. Preemption is the power of federal law to displace state law substantively.[3] The federal preemptive power may be complete, providing a basis for jurisdiction in the federal courts, or it may be what has been called "ordinary preemption," providing a substantive defense to a state law action on the basis of federal law.

More specifically, ordinary preemption may be invoked in both state and federal court as an affirmative defense to the allegations in a plaintiff's complaint. Such a defense asserts that the state claims have been substantively displaced by federal law. See *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392, 96 L. Ed. 2d 318, 107 S. Ct. 2425 (1987); *BLAB T.V.*, 182 F.3d at 855. However, a case may not be removed to federal court on the basis of a federal defense, including that of federal preemption. Caterpillar, 482 U.S. at 393.

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[3] This power derives from the Supremacy Clause of Article VI of the Federal Constitution, which provides that

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

U.S. Const. Art. VI, cl. 2. See *Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202, 208, 85 L. Ed. 2d 206, 105 S. Ct. 1904 (1985) (citing *Gibbons v. Ogden*, 22 U.S. 1, 9 Wheat. 1, 6 L. Ed. 23 (1824) (explaining that a state law that is contrary to or interferes with a federal law must yield to the federal law)).

Complete preemption, on the other hand, is a doctrine distinct from ordinary preemption. Rather than constituting a defense, it is a narrowly drawn jurisdictional rule for assessing federal removal jurisdiction when a complaint purports to raise only state law claims. See *id.* at 393. It looks beyond the complaint to determine if the suit is, in reality, "purely a creature of federal law," even if state law would provide a cause of action in the absence of the federal law. Id. It transforms the state claim into one arising under federal law, thus creating the federal question jurisdiction requisite to removal to federal courts. See *Metropolitan Life Ins. v. Taylor*, 481 U.S. 58, 63-64, 95 L. Ed. 2d 55, 107 S. Ct. 1542 (1987) ("Congress may so completely pre-empt a particular area that any civil complaint raising this select group of claims is necessarily federal in character.").

The Supreme Court and this Circuit have found complete preemption only under section 301 of the Labor Management Relations Act ("LMRA"), 29 U.S.C. § 185, and section 502 of the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1132(a). See *Anderson v. H & R Block, Inc.*, 287 F.3d 1038, 1042 (11th Cir. 2002); *BLAB T.V.*, 182 F.3d at 855. The Supreme Court has cautioned that complete preemption can be found only in statutes with "extraordinary" preemptive force. See *Caterpillar*, 482 U.S. at 393; *Metropolitan Life*, 481 U.S. at 65. Moreover, that "extra-ordinary" preemptive force must be manifest in the clearly expressed intent of Congress. See *Anderson*, 287 F.3d at 1047; cf. *Metropolitan Life*, 481 U.S. at 66 (finding a clear manifestation of Congress's intent to make causes of action within the scope of section 502 of ERISA removable). Indeed, in "the absence of explicit direction from Congress," the Supreme Court has indicated its reluctance to find the extraordinary preemptive power necessary for complete preemption. *Id.* at 64-65. Thus, the complete preemption inquiry turns on the question of "whether Congress not only intended for a federal statute to provide a defense to state-law

claims, but also intended to confer on defendants the ability to remove a case to a federal forum." *Anderson*, 287 F.3d at 1041.

In summary, a federal law may substantively displace state law under ordinary preemption but lack the extraordinary force to create federal removal jurisdiction under the doctrine of complete preemption. If no other grounds for federal jurisdiction exist in such cases, then it falls to the state courts to assess the merits of the ordinary preemption defense. See *Caterpillar*, 482 U.S. at 398 n.13 (leaving the merits of ordinary preemption arguments to be addressed first by the state court). Under this framework, we address the question of whether the RLA completely preempts Geddes's state law claims and provides the requisite federal question jurisdiction to support removal to the federal court pursuant to 28 U.S.C. § 1441(a).

II

Whether the Railway Labor Act has the extraordinary preemptive force necessary to create federal removal jurisdiction is a question of first impression for this Court. We begin the inquiry into congressional intent by looking first to the language and substance of the Railway Labor Act itself. The RLA regulates labor relations between air carriers and their employees, see 45 U.S.C. § 181, with a general purpose "to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions." 45 U.S.C. § 151a. These disputes, "controversies over the meaning of an existing collective bargaining agreement in a particular fact situation," are known as "minor disputes." *Trainmen*, 353 U.S. at 33, 40. "Congress' purpose in passing the RLA was to promote stability in labor-management relations by providing a comprehensive framework for resolving labor disputes." *Hawaiian Airlines, Inc. v. Norris*, 512 U.S. 246, 252, 129 L.

Ed. 2d 203, 114 S. Ct. 2239 (1994). This comprehensive framework establishes a system of adjustment boards with exclusive and mandatory jurisdiction to handle minor disputes, see 45 U.S.C. § 184, thus keeping them out of courts altogether. See *Union Pac. R.R. Co. v. Sheehan*, 439 U.S. 89, 94, 58 L. Ed. 2d 354, 99 S. Ct. 399 (1978) ("Congress considered it essential to keep these so-called 'minor disputes' within the Adjustment Board and out of the courts."); *Pyles v. United Air Lines, Inc.*, 79 F.3d 1046, 1050 (11th Cir. 1996) ("Congress intended that these 'minor disputes' be resolved through the grievance procedures of the RLA rather than in federal court."). The RLA permits narrow federal judicial review of adjustment board decisions, see 45 U.S.C. § 153, but the statute includes no language granting general jurisdiction over minor disputes to federal courts.

Looking to the legislative history of the RLA, we see that it represented an agreement to arbitrate certain disputes, see *Trainmen*, 353 U.S. at 37-39 (discussing the legislative history of the mandatory boards of adjustment), but we find nothing to suggest that Congress intended to allow parties to litigate RLA minor dispute claims in federal court. See *Railway Labor Executives Ass'n v. Pittsburgh & Lake Erie R.R. Co.*, 858 F.2d 936, 942 (3d Cir. 1988) (finding no evidence of congressional intent to make RLA claims removable in the legislative history). Nor do we find any indication that Congress intended for federal courts to acquire jurisdiction solely to ensure that minor disputes are redirected from the courts to the boards of adjustment.

In stark contrast, both the LMRA and ERISA have express language creating a federal cause of action for the resolution of disputes. See 29 U.S.C. § 185(a) (1998) ("Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce . . . may be brought in any district court of the United States having jurisdiction of the parties"); 29 U.S.C.

§ 1132(f) (1999) ("The district courts of the United States shall have jurisdiction, without respect to the amount in controversy or the citizenship of the parties, to grant the relief provided for in subsection (a) of this section in any action.").

The federal cause of action language in the LMRA has been interpreted as authorizing federal courts to fashion a body of federal law for enforcement of these collective bargaining agreements. See Textile *Workers Union v. Lincoln Mills of Ala.*, 353 U.S. 448, 451, 1 L. Ed. 2d 972, 77 S. Ct. 912 (1957); see also *Allis-Chalmers*, 471 U.S. at 209-210 (discussing the interpretation of section 301 in Lincoln Mills and subsequent cases). Similarly, the legislative history of ERISA clearly expressed Congress's intent for ERISA suits to "be regarded as arising under the laws of the United States in similar fashion to those brought under section 301 of the [LMRA]." *Metropolitan Life*, 481 U.S. at 65-66 (citing H.R. Conf. Rep. No. 93-1280, p.327 (1974)). This virtually identical statutory language, accompanied by explicit direction from Congress in the legislative history, forms the primary basis for concluding that Congress intended removability by complete preemption under the two statutes. See *Anderson*, 287 F.3d at 1043; *BLAB T.V.*, 182 F.3d at 855; see also *Metropolitan Life*, 481 U.S. at 65-66. The Railway Labor Act's language and legislative history, in contrast, indicate no such clear congressional intent to authorize federal court jurisdiction.[4]

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[4] Indeed, in Caterpillar, the Supreme Court noted that even under the LMRA, not every dispute concerning employment is completely preempted, even if it is asserted by someone covered by a collective bargaining agreement governed by the LMRA. *Caterpillar*, 482 U.S. at 396 n.10 (clarifying that not all employment-related matters involving unionized employees must be resolved through collective bargaining and governed by federal common law).

In finding complete preemption in this case, the district court reasoned that the similarities between the RLA and the LMRA are sufficiently strong to extend complete preemptive power to the RLA. The district court relied largely on the Supreme Court's opinion in *Hawaiian Airlines*, 512 U.S. 246, 129 L. Ed. 2d 203, 114 S. Ct. 2239, pointing to a footnote that cited "the common purposes of the two statutes, the parallel development of RLA and LMRA [ordinary] pre-emption law, and the desirability of having a uniform common law of labor law pre-emption." District Court Order at 8 (citing *Hawaiian Airlines*, 512 U.S. at 263 n.9) (internal citations omitted).

There is indeed some language in Hawaiian Airlines that might lead one to conclude that the analogy between the LMRA and the RLA should extend to application of the doctrine of complete preemption. However, there are also significant distinguishing factors that persuade us that such language is not controlling here. The primary difference is that Hawaiian Airlines dealt strictly with the substantive defense of ordinary federal preemption as it was applied in state court and was not concerned at all with removal under 28 U.S.C. § 1441(a). The case came before the Supreme Court on certiorari review of a decision by the Hawaii Supreme Court, which had ruled on the ordinary preemption defense. Removal to federal district court through complete preemption was not an issue in the case.

In Hawaiian Airlines, an airline mechanic, Grant Norris, had brought two suits in state court against his former employer for wrongful retaliatory discharge. In both cases, the defendants responded with an ordinary preemption defense, that is, they moved to dismiss for lack of subject matter jurisdiction, arguing that under the RLA, Norris' claims constituted "minor disputes" which must be resolved through arbitration. Thus, the exclusive arbitral procedures of the RLA preempted Norris's state tort claims. The state trial court agreed and dismissed Norris's tort claims in favor of the

arbitration required by the RLA. See *Hawaiian Airlines*, 512 U.S. at 251. On appeal, the Hawaii Supreme Court reversed in both cases, concluding that the RLA did not preempt Norris's state tort actions because the claims did not require interpretation of a collective bargaining agreement. *Id.* at 251-52.

In affirming the Hawaii Supreme Court's decision, the Hawaiian Airlines Court examined the scope of ordinary preemption under the RLA to determine whether Norris's state claims for wrongful retaliatory discharge could be pursued under state law, or whether they constituted a minor dispute that could only be redressed through the RLA arbitral mechanism. See *id.* at 248. Rejecting the "pervasive preemption" of all issues touching on the employment relationship, *id.* at 255 n.5, the Supreme Court held that the RLA's mandatory grievance procedures do not preempt causes of action to enforce rights and obligations independent of a collective bargaining agreement. In doing so, the Court adopted the same standard for ordinary preemption under both the RLA and the LMRA: a state law claim is preempted only if its resolution requires the interpretation of the collective bargaining agreement, but not if the claim turns on purely factual questions that can be resolved without interpreting the agreement. *Id.* at 260-63. Because complete preemption was not an issue in the case, the Court did not engage in any inquiry into congressional intent to permit removal, nor did it have occasion to discuss the standard for complete preemption.

Moreover, in the same footnote cited by the district court, the Supreme Court acknowledged that the LMRA and the RLA "are not identical in language, history and purpose. The LMRA, unlike the RLA, does not mandate arbitration, nor does it prescribe the types of disputes to be submitted to arbitration under bargaining agreements." *Hawaiian Airlines*, 512 U.S. at 263 n.9. Although the similarities between the

two laws lead to the same substantive ordinary preemption standard, the Supreme Court has never analyzed them in the context of complete preemption. For that analysis, we find the differences to be more compelling.

In particular, a principal rationale for complete preemption under the LMRA does not apply to the RLA precisely because the RLA grievance procedures are mandatory. Complete preemption ensures the creation of federal common law to avoid "the possibility of conflicting substantive interpretation under competing legal systems [that] would tend to stimulate and prolong disputes as to its interpretation . . . [and] might substantially impede the parties' willingness to agree to contract terms providing for final arbitral or judicial resolution of disputes." *Allis-Chalmers*, 471 U.S. at 209-210 (quoting *Local 174, Teamsters v. Lucas Flour Co.*, 369 U.S. 95, 104, 7 L. Ed. 2d 593, 82 S. Ct. 571 (1962)). This uniformity rationale fails in the RLA context, however, because minor disputes under the RLA must be sent to arbitration and may not be heard by a court, in contrast to disputes under the LMRA. Both state and federal courts must dismiss a claim as preempted by the RLA once they determine that it requires interpretation of the collective bargaining agreement, see *Hawaiian Airlines*, 512 U.S. 246, 129 L. Ed. 2d 203, 114 S. Ct. 2239, and RLA system boards of adjustment provide the substantive, uniform interpretations of these labor agreements.

We have carefully considered the cases from other circuits cited by American Airlines that recognize complete preemption under the RLA.[5] However, we believe that these

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[5] See, e.g., *Gore v. Trans World Airlines*, 210 F.3d 944, 949 (8th Cir. 2000); *Shafii v. British Airways*, PLC, 83 F.3d 566, 569 (2d Cir. 1996); *O'Brien v. Duluth, Missabe & Iron Range Ry.*, 27 F.3d 569 (7th Cir. 1994); *Deford v. Soo Line R.R. Co.*, 867 F.2d 1080, 1084-86 (8th Cir. 1989); *Schroeder v. Trans World Airlines, Inc.*, 702 F.2d 189, 191 (9th Cir. 1983).

cases have relied on ordinary preemption principles rather than complete preemption principles, and we therefore do not find them persuasive. Moreover, in this circuit, we are bound by *Anderson*, 287 F.3d 1038, and *BLAB T.V.*, 182 F.3d 851, and their requirement of clear congressional intent to permit removal. Under the analysis contained therein, we conclude that our circuit precedent precludes a finding of complete preemption in this case.

In conclusion, bearing in mind the Supreme Court's "reluctance" to find complete preemption absent any indication of Congress's clear intent to establish federal question jurisdiction, and failing to find such intent, we hold that the doctrine of complete preemption does not apply to the RLA.

III

Because we find that the doctrine of complete preemption does not extend to the RLA's provisions governing minor disputes, we do not have jurisdiction to reach the question of whether Geddes's state claims are in fact preempted by federal law. We agree with the Third Circuit that "state courts are competent to determine whether state law has been preempted by federal law and they must be permitted to perform that function in cases brought before them, absent a Congressional intent to the contrary." *Railway Labor Executives Ass'n*, 858 F.2d at 942. Under Hawaiian Airlines, the standard for the defense of ordinary federal preemption under the RLA is clear. *Hawaiian Airlines*, 512 U.S. at 260-263. In this case, the Florida state court is competent to apply it to Geddes's tort claims and determine whether the RLA preempts them, and it should be allowed to do so.

Because there is no federal question jurisdiction, this case is REVERSED and REMANDED to the district court for proceedings consistent herewith.

APPENDIX B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

[Filed June 12, 2002]

Case No. 02-20673-CIV-GOLD-SIMONTON

ARTHUR GEDDES,

Plaintiff,

vs.

AMERICAN AIRLINES, INC., and TERRY MEENAN,

Defendants.

OMNIBUS ORDER

THIS CAUSE is before the court upon the plaintiffs motion to remand (DE #6) and the defendant's motion to dismiss (DE #5). On March 4, 2002, defendant American Airlines, Inc. ("American") removed this case from state court asserting that diversity and federal question subject matter jurisdiction existed over this case, On March 27, 2002, the plaintiff, Arthur Geddes ("Geddes"), filed a motion to remand this case to state court. Notwithstanding its removal of this case, Americann has filed a motion to dismiss. For the reasons that follow, the court finds that Geddes' motion to remand must be denied, and American's motion to dismiss must be granted.

Factual and Procedural Background

Geddes, a Florida resident, is employed by American as an aircraft technician. In 1997, Geddes instituted an employment discrimination lawsuit against American, but that case ended

in 1999. According to Geddes, American employees and supervisors have attempted to force him to resign or to have him fired since he initiated his 1997 complaint.

The instant case arises from an allegedly false statement that was initiated by Ernest Suarez ("Suarez") on July 25, 2001. Geddes claims that Suarez, who also is employed as an aircraft technician by American, made the knowingly faire statement that Geddes threatened to cut his intestines with a piece of metal at the workplace. Geddes says that Suarez made this statement—verbally and in writing with the purpose of having him disciplined or fired, and he published Geddes' alleged threat to J. Fernandez; Pedro Lau, a manager; and Terry Meenan ("Meenan"), the human resources manager.

As a result of the publication of this statement, American management began an investigation of Suarez's accusation. American republished Suarez's, allegations to several individuals, including managers, supervisors, and union representatives, as part of its investigation. On June 25, 2001, three witnesses wrote and signed statements, confirming that Geddes did not threaten Suarez. Despite the statements by these witnesses, Meenan suspended Geddes with pay on June 27, 2001. This suspension resulted in Geddes' loss of overtime and free flying privileges. Geddes claims that American ceased its investigation of the incident on July 1 or 2, 2001, but it continued his suspension until July 18, 2001.

Geddes also states that, on August 1, 2001, American wrote him up with a "First Advisory-—Performance". In this document, American included the allegedly false statements made by Suarez. The document further stated that Geddes had violated the rule against "threatening, intimidating, interfering with, or violent behavior toward another employee". Compl. at ¶ 13. The advisory is now part of Geddes' personnel file, and it can be used against Geddes in the future, as three advisories are grounds for termination.

It is important to note that Geddes' employment is governed by a collective bargaining agreement ("CBA").[1] The CBA contains a managerial rights clause, which states that "(the Union] recognizes that [American] shall have sole jurisdiction of the management and operation of its business, the direction of its working force, the right to maintain discipline and efficiency in its . . . places of employment, and the right of [American] to hire, discipline and discharge employees for just cause, subject to the provisions of this Agreement." CBA dated 8115195 at Art. 28(b). Pursuant to this clause, American has promulgated Rules of Conduct to monitor its employees' behavior at the workplace. Among these rules are the following: "Do not make false or slanderous statements about [American], its employees, or patrons. . . . Threatening, intimidating, interfering with, or violent behavior toward another employee . . . while either on or off duty, is prohibited." Am. Policies and Procedures Manual, Rules 21 and 32.

Article 29(f) of the CBA further provides that "the Union does not question the right of [American's] supervisors to manage and supervise the workforce and make reasonable inquiries of employees, individually or collectively, in the normal course of work." CBA dated 8115195, at Art. 29(f). Pursuant to this clause, American implemented procedures for supervisors to follow when conducting investigations regarding employee misconduct in the workplace. *See* Am. Peak Perf. Through Commitment Procedures. These procedures detail the supervisors to be involved in an investigation of employee misconduct, the questions to be asked during the investigation, and the disciplinary actions to be taken regarding the employees involved.

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[1] Although Geddes did not attach the CBA to his complaint, the court can consider it in assessing its removal jurisdiction pursuant to the petition for removal and motion for remand. *See Sierminksi v. Transouth Fin. Corp.*, 216 F.3d 945, 949 (11th Cir. 2000).

The CBA requires that, if an employee "believes that he has been unjustly dealt with or that any provision of this Agreement has not been properly applied or interpreted", the employee present his grievance through the mandatory grievance procedures detailed in the CBA. CBA dated 8/15/95, at Art. 31(a).

Based upon Suarez's statement that Geddes threatened to cut his intestines and American's subsequent investigation, Geddes filed a three-count complaint against American in state court on January 31, 2002. This complaint alleged: count I, defamation of character; count 11, negligence; and count III, negligent supervision and retention. American removed Geddes' complaint on March 4, 2002, pursuant to 28 U.S.C. § 1441, American's notice of removal alleges two grounds for federal jurisdiction: federal question jurisdiction under 28 U.S.C. § 1331 and diversity jurisdiction under 28 U.S.C. § 1332. American contends that federal question jurisdiction arises under the Railway Labor Act ("RLA"), 45 U.S.C. § 184, which provides the exclusive procedure for evaluating the justification of an air carrier's disciplinary action against an employee. According to American, the existence of a federal question under the RLA preempts Geddes' state law based claims. Alternatively, American contends that diversity jurisdiction exists in this case because the parties named in Geddes,[2] original complaint are diverse,' and the amount in controversy exceeds $75,000.00.

Geddes filed an amended complaint onMarch 21, 2002, together with a motion to remand this case to state court. Geddes' amended complaint differs from the original only in that it adds Terry Meenan, a Florida resident, as a defendant. On March 25, 2002, American fled a motion to dismiss the original complaint. American also filed a motion to strike and/or dismiss the amended complaint on April 12, 2002. In

[2] Geddes is a Florida resident, and American is a Texas corporation.

its motion to stake, American contends that the amended complaint was improperly filed because Geddes failed to request or obtain leave of court. Additionally, American argues that the amended complaint was filed solely to destroy this court's diversity jurisdiction. American also contends that dismissal of the amended and original complaints is appropriate because the claims alleged in the complaints are preempted by the RLA, and arbitration is mandated by 45 U.S.C. § 184. Alternatively, American argues that Geddes' amended complaint must be dismissed for failure to state a claim.

Analysis

I. Motion to Remand

The first matter that must be considered is Geddes' motion to remand this case to state court: In his motion, Geddes states that American improperly removed his complaint because this court lacks subject matter jurisdiction over his claims. In support of his motion, Geddes makes two arguments. First, he contends that this case is not governed by any federal question. That is, the allegations of his complaint are not preempted by the RLA. Second, he argues that diversity jurisdiction is lacking in that the parties are not diverse and the amount in controversy does not exceed $75,000.00. The analysis below discusses only the first point raised by Geddes. The finding that Geddes' complaint raises a federal question renders American's removal of Geddes' complaint proper, and the court need not resort to the issue of diversity jurisdiction.

A. Standard for Motion to Remand

A defendant's right to remove a case to federal court is conferred by statute. *See Gould v. Mutual Life Ins. Co.*, 790 F.2d 769 (9th Cir. 1989); *see also* 28 U.S.C. § 1441. Construction of removal statutes is governed by federal law. *See Brown v. Demco, Inc.*, 792 F.2d 478 (5th Cir. 1986). Federal

courts uniformly have held that removal statutes must be strictly construed against removal in order to "prevent encroachment on the state court's right to decide cases properly brought before it." *Harris v. Huffco Petroleum Corp.*, 633 F. Supp. 250, 253 (S.D. Ala. 1986). A removing defendant has the burden to prove that the district court has subject matter jurisdiction over the cause and that removal is therefore proper. *See Williams v. Best Buy Co.*, 269 F.3d 1316, 1319 (11th Cir. 2001). Jurisdiction, must be determined on the basis of claims alleged in the pleadings at the time the petition forremoval is filed. *See Pullman Co. v. Jenkins*, 305 U.S. 534, 537, 59 S. Ct. 347, 348-49, 83 L.Ed. 334 (1939). As a result, the court must look to Geddes' original complaint, not his amended complaint, to determine whether removal was proper in this case.

The first basis for removal asserted by American is federal question jurisdiction. This type of jurisdiction requires that the action arise under the Constitution, laws, or treaties of the United States. *See* 28 U.S.C. § 1331. In deciding whether a federal question exists, a district court must apply the well-pleaded complaint rule, whereby the court looks to the face of the complaint, rather than to any defenses asserted by a defendant. *See Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392 (1987); *Metropolitan Life Ins. Co. v. Taylor*, 481 U.S. 58, 63 (1987); *Anderson v. H&R Block*, 287 F.3d 1038,1041(1 ith Cir. 2002). Consequently, the general rule is that a case may not be removed to federal court on the basis of a federal defense, including the defense of preemption. *See Caterpillar, Inc.*, 482 U.S. at 393; *Anderson*, 287 F.3d at 1042; *see also Louisville & Nashville R.R. v. Mottley*, 211 U.S.149, 152 (1908) (finding that federal question subject matter jurisdiction did not exist where federal question arose solely from defense, not complaint that alleged state claim).

B. Preemption As Grounds For Removal

Geddes' complaint is based on state law tort claims. Under the well-pleaded complaint rule, no federal claim appears on the face of Geddes' complaint. Despite the nature of the complaint's allegations, American contends that federal question subject matter exists over Geddes' claims because they are preempted by the RLA. At a glance, American's argument appears to fall under the general rule that a case may not be removed on the basis of a federal defense. There is, however, an exception to this rule, which applies in this case to give the court federal question jurisdiction. This exception is known as the "complete preemption" doctrine. *See Caterpillar, Inc.*, 482 U.S. at 393; *Metropolitan Life Ins. Co.*, 481 U.S. at 63-64 ("Congress may so completely pre-empt a particular area that any civil complaint raising this select group of claims is necessarily federal in character."); *Anderson*, 287 F.3d at 1042.

The doctrine of complete preemption differs from the defense of simple preemption in that the defense of pre-emption is a question of whether a defense is available under federal law, while complete preemption is a jurisdictional question that focuses on Congress' intent to make the cause of action a federal cause of action and removable, despite the fact that the plaintiffs complaint identifies only state claims. *See Anderson*, 287 F.3d at 1042 n.6; *Hooper v. Albany Int'l Corp.*, 149 F.Supp,2d 1315, 1320 (MD. Ala. 2001) (citing *Whitman v. Raley's, Inc.*, 886 F.2d 1177, 1181 (9th Cir. 1989)); *see also Rice v. Panchal*, 65 F.3d 637, 640 (7th Cir.1995) (explaining difference between complete and conflict/defense preemption). If a removal petition demonstrates that a plaintiff's claims, although appearing as state law claims, are federal in substance, the preemptive force of federal law provides a basis for removal jurisdiction. *See Avco Corp, v. Aero Lodge No. 735*, 390 U.S. 557, 560 (1968); *Copling v. The Container Store, Inc.*, 174 F.3d 590, 595 (5th

Cir. 1999) (explaining difference between complete and conflict/defense preemption and stating that former provides grounds for removal).

C. Preemption Under the RLA

As mentioned above, American contends that Geddes' claims are preempted by the RLA, 45 U.S.C. § 151 *et seq.* Before addressing American's argument, it should be noted that neither the Eleventh Circuit nor the United States Supreme Court has addressed whether the RLA gives rise to complete preemption. In *Anderson v. H&R Block, Inc.*, 287 F.3d 1038 (11th Cir. 2002), however, the Eleventh Circuit cautioned that complete preemption should be found only in limited circumstances. *Id.* at 1042.[3] The Eleventh Circuit identified two circumstances when the Supreme Court has found complete preemption to exist—the Labor Management Relations Act ("LMRA"), 29. U.S.C. § 185, and the Employment Retirement Income Security Act, 29 U.S.C. § 1132(a). *Id.* It went on to hold that the National Banking Act, the statute at issue in the case, did not completely preempt the plaintiff's state law claims. *Id.*

Anderson provides that congressional intent is the "touchstone" of the complete preemption inquiry. *Anderson* also reiterated that the Supreme Court has found the LMRA to provide grounds forremoval. These points are significant because, in *Hawaiian Airlines, Inc. v. Norris*, 512 U.S. 246 (1994), the Supreme Court stated that preemption under the RLA must be interpreted like preemption under the LMRA. Although *Hawaiian Airlines* dealt with defense preemption, not complete preemption, the Court's preemption analysis of the RLA was guided by an inquiry into congressional intent, the same inquiry that the Eleventh Circuit says must be employed with complete preemption issues. *See Hawaiian*

[3] Neither party has discussed *Anderson* in its briefs on the complete preemption issue.

Air., 512 U.S. 252. The Court stated that the LMRA and the RLA share a "common purpose", that of addressing labor disputes for grievances arising under CBAs. *Id.* at 263 n.9. The Court also emphasized that it was desirous of "having a uniform common law of labor law preemption". *Id.* Most importantly, the Court stated that the standard for examining preemption under the RLA is "virtually identical to the pre-eruption standard the Court employs in cases involving § 301 of the LMRA, 29 U.S.C. § 85." *Id* at 260. As the Eleventh Circuit observed in *Anderson*, § 301 of the LMRA is one of the provisions that gives rise to complete preemption. This provision "ensures that federal law will be the basis for interpreting collective bargaining agreements", which are also the subject of RLA disputes. *Hawaiian Air.* at 262 (citation omitted). If the R.LA is to be interpreted under the same standard as § 301 of the LMRA, and there is a recognized interest in uniformity of preemption principles under both statutes, it follows that under the reasoning of the Supreme Court in *Hawaiian Airlines*, the RLA also can give rise to complete preemption.

The RLA, which applies primarily to labor relations in the airline industry, was established by Congress as "a frame-work for the resolution of disputes between air carriers and their employees that 'grow [ ] out of grievances, or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions.'" *Pilkington v. United Air.*, 112 F.3d 1532,1538 (11th Cir.1997) (quoting *Pyles v. United Air Lines, Inc.*, 79 F.3d 1046, 1049 (11th Cir.1996)). As discussed above, the Supreme Court has adopted the same preemption standard for the RLA as it employs in cases arising under the Lam. *See Pilkington*, 112 F.3d at 1538 (citing *Hawaiian Air., Inc, v. Norris*, 512 U.S. 246, 263 (1994), which revisited standard for preemption of claims by the RLA). This standard precludes preemption of state law claims that enforce rights independent of the CBA. *See Pilkington*, 12 F.3d at 1538. As explained by the Eleventh

Circuit, "The fact that reference to a CBA may be required, particularly where factual issues are involved, is insufficient of itself to preempt an independent state law claim; only where interpretation of a CBA is required will the claim be preempted." *Id.*

Two circuits have addressed facts very similar to those at issue here and have concluded that the plaintiffs' claims were preempted by the statute so as to provide a basis for removal jurisdiction. The first such case is *Gore v. Trans World Airlines*, 210 F.3d 944 (8th Cir. 2000), where the Eighth Circuit held that the plaintiff's libel, slander, and negligence claims were preempted by the RLA, In *Gore*, Harold Smallwood, the plaintiffs coworker, allegedly overheard the plaintiff tell another coworker that lie planned to kill himself and other employees. *Id.* at 947. Smallwood reported this comment to a union steward, who in turn reported the comment to a supervisor. *See id.* This supervisor then initiated an investigation into the incident. *See id.* On the following morning, crew members were instructed not to allow the plaintiff onto the premises. *See id.* The plaintiffs CBA contained a management rights clause, pursuant to which the airline issued rules of conduct proscribing violence, threats of violence, and firearms at the workplace. *See id.* The CBA also required the airline to maintain safe working conditions and to promptly handle complaints involving the safety of working conditions. *See id.* at 948. The plaintiff in *Gore* filed a complaint in state court alleging false arrest, negligence, libel and slander, and invasion of privacy. *See id.* The defendants—then removed the complaint to state court and filed a motion to dismiss on the grounds of preemption. *See Id.*

The Eighth Circuit concluded that removal was proper due to preemption by the RLA. It found that the plaintiffs state law claims were inextricably intertwined with consideration or interpretation of the CBA. *Id.* at 949. This finding was

based primarily upon the fact that the parties' rights and duties under each tort were defined by the governing CBA. The following discussion by the Eighth Circuit is highly relevant to this case:

> While state law has created these tort actions, the collective bargaining agreement is the defining source of the duties specifically owed by the defendants for each claim asserted. . . .
>
> While Gore's complaint avoids mention of the collective bargaining agreement, it indicates that the actions took place in the course and scope of the defendants' employment with TWA, a relationship in fact governed by a collective bargaining agreement that specifically requires TWA to provide a safe working environment and to promptly investigate and handle complaints relating to worker safety.
>
> . . . Given the fact that Gore's alleged statements caused a serious security concern in the workplace, Gore's burden to prove that he was falsely arrested without legal justification will necessarily require an interpretation of the collective bargaining agreement to determine whether the defendants acted contrary to their duties under the agreement. . . .
>
> Likewise, Gore's libel and slander claims will require the court to construe whether the defendants' actions conformed to the rights and duties created under the collective bargaining agreement. . . . The element [of defamation under state law] requiring a showing that the statement was published with the requisite degree of fault will need to be evaluated within the framework of the contract terms governing the standard by which TWA must handle employee safety complaints. The defendants assert that their actions were required by specific provisions of the collective bargaining agreement. . . .

The same can be said about Gore's claim of negligence. In the circumstances presented in this case, where simple negligence is claimed in the manner in which TWA employees (acting within the course and scope of their employment) investigated claim of a threat to other employees, the collective bargaining agreement is the source of the duty of care owed. The duty allegedly breached is defined by the agreement that governs the employment relationship . . . when the collective bargaining contract is the source of the duty allegedly breached, application of the tort remedy is preempted. . . .

Gore's claims are not purely factual but are rooted in an interpretation of the collective bargaining agreement. We do not hold that removal and preemption may be based on a federal defense. Instead, we have concluded that Gore cannot be successful on the claims he has pleaded in this factual situation without interpreting certain terms of the collective bargaining agreement that govern the rights and duties of the parties. . . .

[F]or Gore to prove the elements of the torts he alleged in this case, he will be required of argue the meaning of standards or duties created and defined by the governing collective bargaining agreement. Because the collective bargaining agreement provides the source of the duties allegedly breached or governs the determination of reasonableness under the state law, the resolution of Gore's tort claims will require more than a mere tangenetial reference to the collective bargaining agreement, even though Gore's complaint omits any reference to the collective bargaining agreement. . . .

Gore asserts facts that occurred while the defendants were seeking to respond, according to their duties under the collective bargaining agreement, to a perceived security threat to many employees. The defendants have

> set forth specific provisions of the collective bargaining agreement that they contend governed their actions and prescribed their duties in this factual scenario. Gore cannot establish liability on his tort claims without demonstrating that the defendants' actions were wrongful under a proper interpretation of the relevant rights and duties bargained *for in* the collective bargaining agreement.

Id. at 949-52 (citations omitted); *see also O'Brien v. Duluth, Missabe & Iron Range Ry. Co.*, No. 93-3045,1994 WL 233620 (7th Cir. May 26, 1994) (holding that removal of state court complaint on basis of complete preemption by RLA was proper); *Culp v. United Pacific R.R. Co.*, No. 401CV360, 2001 WL 1862633 (ED. .Mo. Dec. 18, 2001) (same).

The Tenth Circuit employed a similar analysis *in Garley v. Sandia Corp.*, 236 F.3d 1200 (10th Cir, 2001), when it held that the LMRA preempted the plaintiff's defamation claim.[4] The plaintiff in *Garley* was accused of engaging in timecard fraud by his supervisor, and his supervisor began an investigation to determine whether, in fact, he had engaged in such fraud. *Id.* at 1203. Upon concluding the investigation, the defendant employer terminated the plaintiff.

The plaintiff filed a six count complaint against his employer in state court alleging breach of implied contract, breach of the duty of fair dealing, retaliation, civil conspiracy, defamation, and intentional infliction of emotional *distress. See id.* at 1204. The defendant removed the complaint to federal court and filed a motion to dismiss based on preemption under the LMRA. *See id.* In reviewing the plaintiff's defamation claim, the Tenth Circuit stated that it

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[4] The Supreme Court has stated that the same analysis applies to preemption issues under the LMRA as the RLA. *See Hawaiian Air., Inc. v. Norris*, 512 U.S. 246, 263 (1994). Accordingly, the discussion in *Garley* is highly relevant to this case.

was required to look beyond the allegations of the complaint to determine whether the plaintiffs claims arose from a breach of the defendant's obligations under the CBA. *Id.* at 1211. The Tenth Circuit observed that the plaintiffs defamation claim was based on the theory that his investigation and termination for timecard fraud publicly branded him as dishonest. *Id.* In essence, such a claim "arose out of `the manner' in which the defendant `conducted its investigation of suspected employee misconduct, and the way in which it terminated certain employees'," and, as a result, the claim inevitably required interpretation of the CBA. *Id.* (quoting *Mock v. T.G. & Y Stores, Co.*, 971 F.2d 522, 530 (10th Cir. 1992)). The Tenth Circuit concluded that the defamation claim was preempted because, in order to determine whether the plaintiff had been defamed, the court would have to examine the defendant's rights and obligations under the CBA to determine whether its actions were authorized. *Id.*

Although neither *Gore* nor *Garley* are binding on this court, these cases are highly persuasive authorities that provide valuable insight into the analysis that must be applied to preemption issues under the RLA.[5] First, the background and basic facts of the instant case are very similar to those of

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[5] The court recognizes that other decisions have held that defamation claims in the employment context were not preempted by the RLA. *See, e.g., Luecke v. Schnucks Markets, Inc.*, 85 F.3d 356 (8th Cir. 1996); *Lozano v. Stamp*, No. Civ 01-029, 2001 WL 775525 (E.D. La. July 9, 2001); *Smith v. Bates*, 787 F. Supp.176 (N.D. Cal. 1992). These cases are inapplicable because, in each decision, the court expressly found that the CBA was not implicated by the plaintiffs' state law claims. *See Luecke*, 85 F.3d at 361; *Lozano* at *3; *Smith*, 787 F. Supp. at 178-79. In contrast, the instant case requires that the CBA be interpreted in order to define the parties' rights and duties. *Cox v. International Union of Operating Engineers*, 672 F.2d 421 (5th Cir.1982), which is relied on by Geddes, also is inapplicable because Cox was decided several years before the Supreme Court announced a revised preemption standard in *Hawaiian Airlines* for cases involving the RLA.

Gore and *Gcirley*. Like the plaintiffs in those cases, Geddes was accused by a coworker of engaging in misconduct at the workplace during working hours. Like those plaintiffs, he has asserted defamation and negligence claims that arise from his employer's investigation procedures. The defamation claims requite a determination of whether the statement at issue was privileged, and this inquiry necessarily requires an interpretation of whether American's alleged statement was consistent with or required by the CBA. Similarly, Geddes' negligence claims will require an evaluation of American's investigative performance against the standard established by the CBA. In short, whether American can be held liable for the conduct of which Geddes complains is a matter that can be resolved only by interpreting the CBA. American's investigatory duties, which are central to the defamation and negligence claims, are defined by the CBA. Additionally, the conduct in which Geddes allegedly engaged, threatening a coworker, is proscribed by the CBA.

One need not reach beyond the complaint to find support for American's position that this case requires interpretation of the CBA. Although not mentioning the CBA by name, Geddes' complaint directly implicates the agreement. For example, Geddes alleges that his supervisors "undertook to investigate the accusation" as a result of the false and defamatory statement made by Suarez. Compl. at ¶ 7. The manner of carrying out such an investigation is described in the CBA. The complaint states that Geddes was accused of violating the rule against "threatening, intimidating, interfering with, or violent behavior toward another employee", and, as discussed above, this rule arises from the CBA. Compl. At ¶ 13. Finally, the injuries of which Geddes complains, suspension, loss of overtime pay, and loss of free flying privileges, are benefits that arise from Geddes' employment and, possibly, the CBA. All of these facts support the application of *Gore* and *Garley* to this case, and such an analysis indicates that Geddes' claims are in fact

federal claims that are completely preempted by the RLA. As such, removal of Geddes' complaint by American to this court was proper.

II. Motion to Dismiss

The second matter that must be decided is American's motion to dismiss Geddes' complaint.[6] According to American, Geddes' claims must be dismissed because they are preempted by the RLA as "minor disputes". Such a dispute may be conclusively resolved by interpreting the existing CBA. *See Pyles v, United Air., Inc.*, 79 F.3d 1046, 1049 (11th Cir.1996) (quoting *Consol. Rail Corp. v. Ry. Labor Exec. Assn*, 491 U.S. 299, 305 (1989)). The court already has determined that interpretation of the CBA, is necessary to determine the merits of Geddes' claims. This means that this case involves minor disputes. As such a case, it must be analyzed under the mechanism established by the RLA, which mandates arbitration, not disposition by a district court, for the resolution of disputes between air carriers and their employees that "grow [ ] out of grievances, or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions". 45 U.S.C. § 184.

According to the Eleventh Circuit, "Congress intended that these 'minor disputes' be resolved through the grievance procedures of the RLA *rather than in federal court." Pilkington*, 79 F.3d at 1538 (emphasis added). As a result, "[When the resolution of a state-law claim . . . requires an interpretation of the CBA, the claim is preempted and must be submitted to arbitration before a system board of adjustment." *Id.* In compliance with the RLA requirement of arbitration, federal courts routinely dismiss state law claims that have been found to be preempted by the statute. *See, e.g.,*

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[6] Because Geddes' original and amended complaints are nearly identical, with the exception that the latter complaint adds Meenan as a defendant, the following discussion is applicable to both complaints.

Gore v. Traps World Air, 210 F.3d 944 (8th Cir. 2000); *Pilkington v. United Air.*,112 F,3d.l532 (11th Cir.1997); *Culp v. United Pacific R.R. Co.*, No. 401CV360, 2001 WL 1862633 (ED. .Mo. Dec. 18, 2001); *Espiiral v. Northwest Air.*, 90 F.3d 1452 (9th Cir. 1996). This is because "[o]nce the district court has jurisdiction, the complete preemption which conferred jurisdiction [is] sufficient to authorize dismissal on the grounds of preemption". *Deford v. Soo Line R.R. Co.*, 867 F.2d 1080, 1091 (8th Cir.1989). Because the statutory grievance procedures under the RLA are the mandatory and exclusive remedy for resolving minor disputes, Geddes' complaint, which is based only on state law claims that are preempted by the RLA, must be dismissed.

III. Absence of Diversity Jurisdiction

Notwithstanding the preemption analysis discussed above, dismissal due to lack of subject matter j urisdiction still would be appropriate in this case because diversity jurisdiction, the only other possible source o` jurisdiction, does not exist. A district court has the duty to inquire as to the existence of its subject matter jurisdiction. *See Louisville & Nashville RR Co. v. Mottley*, 211 U.S. 149, 151 (1908). While diversity of citizenship existed based upon the original complaint, when Geddes amended his complaint to add Meenan as a parry, diversity ceased to exist. This is because both Geddes and Meenan are Florida residents,[7] *See University of S. Ala. v. Am. Tobacco Co.*, 168 F.3d 405, 412 (11th Cir. 1999) ("Where jurisdiction is predicated on diversity of citizenship, all plaintiffs must be diverse from all defendants.").

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[7] American correctly notes that the amended complaint cannot be considered in determining the removal issue, but it is appropriate to look at this complaint to determine the continued existence of subject matter jurisdiction after removal. *See Crowe v. Coleman*, 113 F.3d 1536, 1538 (11th Cir.1997).

Additionally, it is not clear from the complaint that the amount in controversy exceeds $75,000.00. Geddes has requested punitive damages in the amount of $5 million in his complaint, but American has not attempted to show that these damages are recoverable to a "legal certainty". *Honey Equip. Co. v. Credit Alliance Corp.*, 821 F.2d 1531, 1535 (11th Cir.1987) (stating that court can consider punitive damages in determining amount in controversy for removal jurisdiction only if removing defendant can show to a "legal certainty" that such damages can be recovered). Other than this request for punitive damages, the plaintiff has not specified an amount of damages in his complaint. American has not submitted any evidence in support of its removal claim that the amount in controversy exceeds $75,000.00 exclusive of interest and costs, nor has American submitted any proof to refute the plaintiffs statement that the complaint does not meet the jurisdictional amount. American also has failed to show that the amount of punitive damages requested by Geddes is recoverable under Florida law or is a realistic assessment of a recoverable amount. This deficiency exists in Geddes' amended complaint to the same extent as it exists in his original complaint. Accordingly, diversity subject matter jurisdiction is absent in this case.

It is hereby:

ORDERED AND ADJUDGED that

1. Geddes' motion to remand this case (DE #6) is DENTED.

2. American's motion to dismiss (DE #5) is GRANTED.

3. The Clerk of the Court shall CLOSE this case.

4. All pending motions are DENIED AS MOOT.

DONE AND ORDERED in Chambers at Miami, Florida, this 11th day of June, 2002.

/s/ Alan S. Gold
THE HONORABLE ALAN S. GOLD
UNITED STATES DISTRICT JUDGE

cc:
Magistrate Judge Andrea Simonton
Donna M. Baliman, Esq.; 4801 S. University Dr., Ste. 3010; Ft. Lauderdale, FL 33328 Terrence G. Connor, Esq.; 200 S. Biscayne Blvd., Ste. 5300; Miami, FL 33131-2339

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

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APPENDIX C

TITLE 45.—RAILROADS

CHAPTER 8.—RAILWAY LABOR

GENERAL PROVISIONS

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45 USCS § 151 (2003)

Review expert commentary from The National Institute for Trial Advocacy

§ 151. Definitions; short title

When used in this Act and for the purposes of this Act—

First. The term "carrier" includes any railroad subject to the jurisdiction of the Surface Transportation Board, any express company that would have been subject to subtitle IV of title 49, United States Code [49 USCS §§ 10101 *et seq.*], as of December 31, 1995,[,] and any company which is directly or indirectly owned or controlled by or under common control with any carrier by railroad and which operates any equipment or facilities or performs any service (other than trucking service) in connection with the transportation, receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, and handling of property transported by railroad, and any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the business of any such "carrier": Provided, however, That the term "carrier" shall not include any street, interurban, or suburban electric railway, unless such railway is operating as a part of a general steam-railroad system of transportation, but shall not exclude any part of the general steam-railroad system of transportation now or hereafter operated by any other motive power.

The Surface Transportation Board is hereby authorized and directed upon request of the Mediation Board or upon complaint of any party interested to determine after hearing whether any line operated by electric power falls within the terms of this proviso. The term "carrier" shall not include any company by reason of its being engaged in the mining of coal, the supplying of coal to a carrier where delivery is not beyond the mine tipple, and the operation of equipment or facilities therefor, or in any of such activities.

Second. The term "Adjustment Board" means the National Railroad Adjustment Board created by this Act.

Third. The term "Mediation Board" means the National Mediation Board created by this Act.

Fourth. The term "commerce" means commerce among the several States or between any State, Territory, or the District of Columbia and any foreign nation, or between any Territory or the District of Columbia and any State, or between any Territory and any other Territory, or between any Territory and the District of Columbia, or within any Territory or the District of Columbia, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign nation.

Fifth. The term "employee" as used herein includes every person in the service of a carrier (subject to its continuing authority to supervise and direct the manner of rendition of his service) who performs any work defined as that of an employee or subordinate official in the orders of the Surface Transportation Board now in effect, and as the same may be amended or interpreted by orders hereafter entered by the Board pursuant to the authority which is hereby conferred upon it to enter orders amending or interpreting such existing orders:

Provided, however, That no occupational classification made by order of the Surface Transportation Board shall be construed to define the crafts according to which railway employees may be organized by their voluntary action, nor shall the jurisdiction or powers of such employee organizations be regarded as in any way limited or defined by the provisions of this Act or by the orders of the Board.

The term "employee" shall not include any individual while such individual is engaged in the physical operations consisting of the mining of coal, the preparation of coal, the handling (other than movement by rail with standard railroad locomotives) of coal not beyond the mine tipple, or the loading of coal at the tipple.

Sixth. The term "representative" means any person or persons, labor union, organization, or corporation designated either by a carrier or group of carriers or by its or their employees, to act for it or them.

Seventh. The term "district court" includes the Supreme Court of the District of Columbia [United States District Court for the District of Columbia]; and the term "circuit court of appeals [court of appeals]" includes the Court of Appeals of the District of Columbia [United States Court of Appeals for the District of Columbia].

This Act may be cited as the "Railway Labor Act."

TITLE 45.—RAILROADS

CHAPTER 8.—RAILWAY LABOR

GENERAL PROVISIONS

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45 USCS § 152 (2003)

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§ 152. General duties

First. Duty of carriers and employees to settle disputes. It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof.

Second. Consideration of disputes by representatives. All disputes between a carrier or carriers and its or their employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute.

Third. Designation of representatives. Representatives, for the purposes of this Act shall be designated by the respective parties without interference, influence, or coercion by either party over the designation of representatives by the other; and neither party shall in any way interfere with, influence, or coerce the other in its choice of representatives. Representatives of employees for the purposes of this Act need not be persons in the employ of the carrier, and no carrier shall, by interference, influence, or coercion seek in any manner

to prevent the designation by its employees as their representatives of those who or which are not employees of the carrier.

Fourth. Organization and collective bargaining; freedom from interference by carrier; assistance in organizing or maintaining organization by carrier forbidden; deduction of dues from wages forbidden. Employees shall have the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act. No carrier, its officers or agents, shall deny or in any way question the right of its employees to join, organize, or assist in organizing the labor organization of their choice, and it shall be unlawful for any carrier to interfere in any way with the organization of its employees, or to use the funds of the carrier in maintaining or assisting or contributing to any labor organization, labor representative, or other agency of collective bargaining, or in performing any work therefor, or to influence or coerce employees in an effort to induce them to join or remain or not to join or remain members of any labor organization, or to deduct from the wages of employees any dues, fees, assessments, or other contributions payable to labor organizations, or to collect or to assist in the collection of any such dues, fees, assessments, or other contributions: Provided, That nothing in this Act shall be construed to prohibit a carrier from permitting an employee, individually, or local representatives of employees from conferring with management during working hours without loss of time, or to prohibit a carrier from furnishing free transportation to its employees while engaged in the business of a labor organization.

Fifth. Agreements to join or not to join labor organizations forbidden. No carrier, its officers, or agents shall require any person seeking employment to sign any contract or agreement

promising to join or not to join a labor organization; and if any such contract has been enforced prior to the effective date of this Act [enacted May 20, 1926], then such carrier shall notify the employees by an appropriate order that such contract has been discarded and is no longer binding on them in any way.

Sixth. Conference of representatives; time; place; private agreements. In case of a dispute between a carrier or carriers and its or their employees, arising out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, it shall be the duty of the designated representative or representatives of such carrier or carriers and of such employees, within ten days after the receipt of notice of a desire on the part of either party to confer in respect to such dispute, to specify a time and place at which such conference shall be held: Provided, (1) That the place so specified shall be situated upon the line of the carrier involved or as otherwise mutually agreed upon; and (2) that the time so specified shall allow the designated conferees reasonable opportunity to reach such place of conference, but shall not exceed twenty days from the receipt of such notice: And provided further, That nothing in this Act shall be construed to supersede the provisions of any agreement (as to conferences) then in effect between the parties.

Seventh. Change in pay, rules or working conditions contrary to agreement or to section 156 forbidden. No carrier, its officers or agents shall change the rates of pay, rules, or working conditions of its employees, as a class as embodied in agreements except in the manner prescribed in such agreements or in section 6 of this Act [45 USCS § 156].

Eighth. Notices of manner of settlement of disputes; posting. Every carrier shall notify its employees by printed notices in such form and posted at such times and places as shall be specified by the Mediation Board that all disputes between the carrier and its employees will be handled in

accordance with the requirements of this Act, and in such notices there shall be printed verbatim, in large type, the third, fourth, and fifth paragraphs of this section. The provisions of said paragraphs are hereby made a part of the contract of employment between the carrier and each employee, and shall be held binding upon the parties, regardless of any other express or implied agreements between them.

Ninth. Disputes as to identity of representatives; designation by Mediation Board; secret elections. If any dispute shall arise among a carrier's employees as to who are the representatives of such employees designated and authorized in accordance with the requirements of this Act, it shall be the duty of the Mediation Board, upon request of either party to the dispute, to investigate such dispute and to certify to both parties, in writing, within thirty days after the receipt of the invocation of its services, the name or names of the individuals or organizations that have been designated and authorized to represent the employees involved in the dispute, and certify the same to the carrier. Upon receipt of such certification the carrier shall treat with the representative so certified as the representative of the craft or class for the purposes of this Act. In such an investigation, the Mediation Board shall be authorized to take a secret ballot of the employees involved, or to utilize any other appropriate method of ascertaining the names of their duly designated and authorized representatives in such manner as shall insure the choice of representatives by the employees without interference, influence, or coercion exercised by the carrier. In the conduct of any election for the purposes herein indicated the Board shall designate who may participate in the election and establish the rules to govern the election, or may appoint a committee of three neutral persons who after hearing shall within ten days designate the employees who may participate in the election. The Board shall have access to and have power to make copies of the books and records of the carriers

to obtain and utilize such information as may be deemed necessary by it to carry out the purposes and provisions of this paragraph.

Tenth. Violations; prosecutions and penalties. The willful failure or refusal of any carrier, its officers or agents to comply with the terms of the third, fourth, fifth, seventh, or eighth paragraph of this section shall be a misdemeanor, and upon conviction thereof the carrier, officer, or agent offending shall be subject to a fine of not less than $ 1,000 nor more than $ 20,000 or imprisonment for not more than six months, or both fine and imprisonment, for each offense, and each day during which such carrier, officer, or agent shall willfully fail or refuse to comply with the terms of the said paragraphs of this section shall constitute a separate offense. It shall be the duty of any district attorney of the United States [United States attorney] to whom any duly designated representative of a carrier's employees may apply to institute in the proper court and to prosecute under the direction of the Attorney General of the United States, all necessary proceedings for the enforcement of the provisions of this section, and for the punishment of all violations thereof and the costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States: Provided, That nothing in this Act shall be construed to require an individual employee to render labor or service without his consent, nor shall anything in this Act be construed to make the quitting of his labor by an individual employee an illegal act; nor shall any court issue any process to compel the performance by an individual employee of such labor or service, without his consent.

Eleventh. Union security agreements; check-off. Notwithstanding any other provisions of this Act, or of any other statute or law of the United States, or Territory thereof, or any State, any carrier or carriers as defined in this Act and a

labor organization or labor organizations duly designated and authorized to represent employees in accordance with the requirements of this Act shall be permitted—

(a) to make agreements, requiring, as a condition of continued employment, that within sixty days following the beginning of such employment, or the effective date of such agreements, whichever is the later, all employees shall become members of the labor organization representing their craft or class: Provided, That no such agreement shall require such condition of employment with respect to employees to whom membership is not available upon the same terms and conditions as are generally applicable to any other member or with respect to employees to whom membership was denied or terminated for any reason other than the failure of the employee to tender the periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership,

(b) to make agreements providing for the deduction by such carrier or carriers from the wages of its or their employees in a craft or class and payment to the labor organization representing the craft or class of such employees, of any periodic dues, initiation fees, and assessments (not including fines and penalties), uniformly required as a condition of acquiring or retaining membership, Provided, That no such agreement shall be effective with respect to any individual employee until he shall have furnished the employer with a written assignment to the labor organization of such membership dues, initiation fees, and assessments, which shall be revocable in writing after the expiration of one year or upon the termination date of the applicable collective agreement, whichever occurs sooner.

(c) The requirement of membership in a labor organization in an agreement made pursuant to subparagraph (a) shall be satisfied, as to both a present or future employee in engine, train, yard, or hostling service, that is, an employee engaged in any of the services or capacities covered in section 3, first (h) of this act [45 USCS § 153, subsec. First, para. (h)] defining the jurisdictional scope of the first division of the National Railroad Adjustment Board, if said employee shall hold or acquire membership in any one of the labor organizations, national in scope, organized in accordance with this act and admitting to membership employees of a craft or class in any of said services; and no agreement made pursuant to subparagraph (b) shall provide for deductions from his wages for periodic dues, initiation fees, or assessments payable to any labor organization other than that in which he holds membership: Provided, however, That as to an employee in any of said services on a particular carrier at the effective date of any such agreement on a carrier, who is not a member of any one of the labor organizations, national in scope, organized in accordance with this act and admitting to membership employees of a craft or class in any of said services, such employee, as a condition of continuing his employment, may be required to become a member of the organization representing the craft in which he is employed on the effective date of the first agreement applicable to him: Provided, further, That nothing herein or in any such agreement or agreements shall prevent an employee from changing membership from one organization to another organization admitting to membership employees of a craft or class in any of said services.

(d) Any provisions in paragraphs fourth and fifth of section 2 of this act [this section] in conflict herewith are to the extent of such conflict amended.

TITLE 45.—RAILROADS

CHAPTER 8.—RAILWAY LABOR

GENERAL PROVISIONS

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45 USCS § 153 (2003)

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§ 153. National Railroad Adjustment Board

First. Establishment; composition; powers and duties; divisions; hearings and awards; judicial review. There is hereby established a Board, to be known as the "National Railroad Adjustment Board", the members of which shall be selected within thirty days after approval of this Act [enacted June 21, 1934], and it is hereby provided—

(a) That the said Adjustment Board shall consist of thirty-four members, seventeen of whom shall be selected by the carriers and seventeen by such labor organizations of the employees, national in scope, as have been or may be organized in accordance with the provisions of section 2 of this Act [45 USCS §§ 151a, 152].

(b) The carriers, acting each through its boards of directors or its receiver or receivers, trustee or trustees or through an officer or officers designated for that purpose by such board, trustee or trustees or receiver or receivers, shall prescribe the rules under which its representatives shall be selected and shall select the representatives of the carriers on the Adjustment Board and designate the division on which each such representative shall serve, but no carrier or system of carriers shall have more than one voting representative on any division of the Board.

(c) Except as provided in the second paragraph of subsection (h) of this section, the national labor organizations, as defined in paragraph (a) of this section, acting each through the chief executive or other medium designated by the organization or association thereof, shall prescribe the rules under which the labor members of the Adjustment Board shall be selected and shall select such members and designate the division on which each member shall serve; but no labor organization shall have more than one voting representative on any division of the Board.

(d) In case of a permanent or temporary vacancy on the Adjustment Board, the vacancy shall be filed by selection in the same manner as in the original selection.

(e) If either the carriers or the labor organizations of the employees fails to select and designate representatives to the Adjustment Board, as provided in paragraphs (b) and (c) of this section, respectively, within sixty days after the passage of this Act [enacted June 21, 1934], in case of any original appointment to office of a member of the Adjustment Board, or in case of a vacancy in any such office within thirty days after such vacancy occurs, the Mediation Board shall thereupon directly make the appointment and shall select an individual associated in interest with the carriers or the group of labor organizations of employees, whichever he is to represent.

(f) In the event a dispute arises as to the right of any national labor organization to participate as per paragraph (c) of this section in the selection and designation of the labor members of the Adjustment Board, the Secretary of Labor shall investigate the claim of such labor organization to participate, and if such claim in the judgment of the Secretary of Labor has merit, the Secretary shall notify the Mediation Board accordingly,

and within ten days after receipt of such advice the Mediation Board shall request those national labor organizations duly qualified as per paragraph (c) of this section to participate in the selection and designation of the labor members of the Adjustment Board to select a representative. Such representative, together with a representative likewise designated by the claimant, and a third or neutral party designated by the Mediation Board, constituting a board of three, shall within thirty days after the appointment of the neutral member, investigate the claims of the labor organization desiring participation and decide whether or not it was organized in accordance with section 2 hereof [45 USCS §§ 151a, 152] and is otherwise properly qualified to participate in the selection of the labor members of the Adjustment Board, and the findings of such boards of three shall be final and binding.

(g) Each member of the Adjustment Board shall be compensated by the party or parties he is to represent. Each third or neutral party selected under the provisions of (f) of this section shall receive from the Mediation Board such compensation as the Mediation Board may fix, together with his necessary traveling expenses and expenses actually incurred for subsistence, or per diem allowance in lieu thereof, subject to the provisions of law applicable thereto, while serving as such third or neutral party.

(h) The said Adjustment Board shall be composed of four divisions, whose proceedings shall be independent of one another, and the said divisions as well as the number of their members shall be as follows:

First division: To have jurisdiction over disputes involving train- and yard-service employees of carriers, that is, engineers, firemen, hostlers, and outside hostler helpers, conductors, trainmen, and yard-

service employees. This division shall consist of eight members, four of whom shall be selected and designated by the carriers and four of whom shall be selected and designated by the labor organizations, national in scope and organized in accordance with section 2 hereof [45 USCS §§ 151a, 152] and which represent employees in engine, train, yard, or hostling service; Provided, however, That each labor organization shall select and designate two members on the First Division and that no labor organization shall have more than one vote in any proceedings of the First Division or in the adoption of any award with respect to any dispute submitted to the First Division: Provided further, however, That the carrier members of the First Division shall cast no more than two votes in any proceedings of the division or in the adoption of any award with respect to any dispute submitted to the First Division.

Second division: To have jurisdiction over disputes involving machinists, boilermakers, blacksmiths, sheet-metal workers, electrical workers, car men, the helpers and apprentices of all the foregoing, coach cleaners, power-house employees, and railroad-shop laborers. This division shall consist of ten members, five of whom shall be selected by the carriers and five by the national labor organizations of the employees.

Third division: To have jurisdiction over disputes involving station, tower, and telegraph employees, train dispatchers, maintenance-of-way men, clerical employees, freight handlers, express, station, and store employees, signal men, sleeping-car conductors, sleeping-car porters, and maids and dining-car employees. This division shall consist of ten mem-

bers, five of whom shall be selected by the carriers and five by the national labor organizations of employees.

Fourth division: To have jurisdiction over disputes involving employees of carriers directly or indirectly engaged in transportation of passengers or property by water, and all other employees of carriers over which jurisdiction is not given to the first, second, and third divisions. This division shall consist of six members, three of whom shall be selected by the carriers and three by the national labor organizations of the employees.

(i) The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on the date of approval of this Act [enacted June 21, 1934], shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes.

(j) Parties may be heard either in person, by counsel, or by other representatives, as they may respectively elect, and the several divisions of the Adjustment Board shall give due notice of all hearings to the employee or employees and the carrier or carriers involved in any disputes submitted to them.

(k) Any division of the Adjustment Board shall have authority to empower two or more of its members to

conduct hearings and make findings upon disputes, when properly submitted, at any place designated by the division: Provided, however, That except as provided in paragraph (h) of this section, final awards as to any such dispute must be made by the entire division as hereinafter provided.

(l) Upon failure of any division to agree upon an award because of a deadlock or inability to secure a majority vote of the division members, as provided in paragraph (n) of this section, then such division shall forthwith agree upon and select a neutral person, to be known as "referee", to sit with the division as a member thereof and make an award. Should the division fail to agree upon and select a referee within ten days of the date of the deadlock or inability to secure a majority vote, then the division, or any member thereof, or the parties or either party to the dispute may certify that fact to the Mediation Board, which Board shall, within ten days from the date of receiving such certificate, select and name the referee to sit with the division as a member thereof and make an award. The Mediation Board shall be bound by the same provisions in the appointment of these neutral referees as are provided elsewhere in this Act for the appointment of arbitrators and shall fix and pay the compensation of such referees.

(m) The awards of the several divisions of the Adjustment Board shall be stated in writing. A copy of the awards shall be furnished to the respective parties to the controversy, and the awards shall be final and binding upon both parties to the dispute. In case a dispute arises involving an interpretation of the award the division of the Board upon request of either party shall interpret the award in the light of the dispute.

(n) A majority vote of all members of the division of the Adjustment Board eligible to vote shall be competent to make an award with respect to any dispute submitted to it.

(o) In case of an award by any division of the Adjustment Board in favor of petitioner, the division of the Board shall make an order, directed to the carrier, to make the award effective and, if the award includes a requirement for the payment of money, to pay to the employee the sum to which he is entitled under the award on or before a day named. In the event any division determines that an award favorable to the petitioner should not be made in any dispute referred to it, the division shall make an order to the petitioner stating such determination.

(p) If a carrier does not comply with an order of a division of the Adjustment Board within the time limit in such order, the petitioner, or any person for whose benefit such order was made, may file in the District Court of the United States for the district in which he resides or in which is located the principal operating office of the carrier, or through which the carrier operates, a petition setting forth briefly the causes for which he claims relief, and the order of the division of the Adjustment Board in the premises. Such suit in the District Court of the United States shall proceed in all respects as other civil suits, except that on the trial of such suit the findings and order of the division of the Adjustment Board shall be conclusive on the parties, and except that the petitioner shall not be liable for costs in the district court nor for costs at any subsequent stage of the proceedings, unless they accrue upon his appeal, and such costs shall be paid out of the appropriation for the expenses of the courts of the United States. If the petitioner shall finally prevail he shall be allowed a

reasonable attorney's fee, to be taxed and collected as a part of the costs of the suit. The district courts are empowered, under the rules of the court governing actions at law, to make such order and enter such judgment, by writ of mandamus or otherwise, as may be appropriate to enforce or set aside the order of the division of the Adjustment Board: Provided, however, That such order may not be set aside except for failure of the division to comply with the requirements of this Act, for failure of the order to conform, or confine itself, to matters within the scope of the division's jurisdiction, or for fraud or corruption by a member of the division making the order.

(q) If any employee or group of employees, or any carrier, is aggrieved by the failure of any division of the Adjustment Board to make an award in a dispute referred to it, or is aggrieved by any of the terms of an award or by the failure of the division to include certain terms in such award, then such employee or group of employees or carrier may file in any United States district court in which a petition under paragraph (p) could be filed, a petition for review of the division's order. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Adjustment Board. The Adjustment Board shall file in the court the record of the proceedings on which it based its action. The court shall have jurisdiction to affirm the order of the division or to set it aside, in whole or in part, or it may remand the proceeding to the division for such further action as it may direct. On such review, the findings and order of the division shall be conclusive on the parties, except that the order of the division may set aside, in whole or in part, or remanded to the division, for failure of the division to comply with the requirements of this Act, for failure of the order to conform, or confine itself, to matters within the scope of the division's jurisdiction,

or for fraud or corruption by a member of the division making the order. The judgment of the court shall be subject to review as provided in sections 1291 and 1254 of title 28, United States Code.

(r) All actions at law based upon the provisions of this section shall be begun within two years from the time the cause of action accrues under the award of the division of the Adjustment Board, and not after.

(s) The several divisions of the Adjustment Board shall maintain headquarters in Chicago, Illinois, meet regularly, and continue in session so long as there is pending before the division any matter within its jurisdiction which has been submitted for its consideration and which has not been disposed of.

(t) Whenever practicable, the several divisions or subdivisions of the Adjustment Board shall be supplied with suitable quarters in any Federal building located at its place of meeting.

(u) The Adjustment Board may, subject to the approval of the Mediation Board, employ and fix the compensations of such assistants as it deems necessary in carrying on its proceedings. The compensation of such employees shall be paid by the Mediation Board.

(v) The Adjustment Board shall meet within forty days after the approval of this Act [enacted June 21, 1934] and adopt such rules as it deems necessary to control proceedings before the respective divisions and not in conflict with the provisions of this section. Immediately following the meeting of the entire Board and the adoption of such rules, the respective divisions shall meet and organize by the selection of a chairman, a vice chairman, and a secretary. Thereafter each division shall annually designate one of its members to act as chairman and one of its members to act as vice

chairman: Provided, however, That the chairmanship and vice-chairmanship of any division shall alternate as between the groups, so that both the chairmanship and vice-chairmanship shall be held alternately by a representative of the carriers and a representative of the employees. In case of a vacancy, such vacancy shall be filled for the unexpired term by the selection of a successor from the same group.

(w) Each division of the Adjustment Board shall annually prepare and submit a report of its activities to the Mediation Board, and the substance of such report shall be included in the annual report of the Mediation Board to the Congress of the United States. The reports of each division of the Adjustment Board and the annual report of the Mediation Board shall state in detail all cases heard, all actions taken, the names, salaries, and duties of all agencies, employees, and officers receiving compensation from the United States under the authority of this Act, and an account of all moneys appropriated by Congress pursuant to the authority conferred by this Act and disbursed by such agencies, employees, and officers.

(x) Any division of the Adjustment Board shall have authority, in its discretion, to establish regional adjustment boards to act in its place and stead for such limited period as such division may determine to be necessary. Carrier members of such regional boards shall be designated in keeping with rules devised for this purpose by the carrier members of the Adjustment Board and the labor members shall be designated in keeping with rules devised for this purpose by the labor members of the Adjustment Board. Any such regional board shall, during the time for which it is appointed, have the same authority to conduct hearings, make findings upon disputes and adopt the same procedure as the division of

the Adjustment Board appointing it, and its decisions shall be enforceable to the same extent and under the same processes. A neutral person, as referee, shall be appointed for service in connection with any such regional adjustment board in the same circumstances and manner as provided in paragraph (l) hereof, with respect to a division of the Adjustment Board.

Second. System, group, or regional boards: establishment by voluntary agreement; special adjustment boards: establishment, composition, designation of representatives by Mediation Board, neutral member, compensation, quorum, finality and enforcement of awards. Nothing in this section shall be construed to prevent any individual carrier, system, or group of carriers and any class or classes of its or their employees, all acting through their representatives, selected in accordance with the provisions of this Act, from mutually agreeing to the establishment of system, group, or regional boards of adjustment for the purpose of adjusting and deciding disputes of the character specified in this section. In the event that either party to such a system, group, or regional board of adjustment is dissatisfied with such arrangement, it may upon ninety days' notice to the other party elect to come under the jurisdiction of the Adjustment Board.

If written request is made upon any individual carrier by the representative of any craft or class of employees of such carrier for the establishment of a special board of adjustment to resolve disputes otherwise referable to the Adjustment Board, or any dispute which has been pending before the Adjustment Board for twelve months from the date the dispute (claim) is received by the Board, or if any carrier makes such a request upon any such representative, the carrier or the representative upon whom such request is made shall join in an agreement establishing such a board within thirty days from the date such request is made. The cases which may be considered by such board shall be defined in

the agreement establishing it. Such board shall consist of one person designated by the carrier and one person designated by the representative of the employees. If such carrier or such representative fails to agree upon the establishment of such a board as provided herein, or to exercise its rights to designate a member of the board, the carrier or representative making the request for the establishment of the special board may request the Mediation Board to designate a member of the special board on behalf of the carrier or representative upon whom such request was made. Upon receipt of a request for such designation the Mediation Board shall promptly make such designation and shall select an individual associated in interest with the carrier or representative he is to represent, who, with the member appointed by the carrier or representative requesting the establishment of the special board, shall constitute the board. Each member of the board shall be compensated by the party he is to represent. The members of the board so designated shall determine all matters not previously agreed upon by the carrier and the representative of the employees with respect to the establishment and jurisdiction of the board. If they are unable to agree such matters shall be determined by a neutral member of the board selected or appointed and compensated in the same manner as is hereinafter provided with respect to situations where the members of the board are unable to agree upon an award. Such neutral member shall cease to be a member of the board when he has determined such matters. If with respect to any dispute or group of disputes the members of the board designated by the carrier and the representative are unable to agree upon an award disposing of the dispute or group of disputes they shall by mutual agreement select a neutral person to be a member of the board for the consideration and disposition of such dispute or group of disputes. In the event the members of the board designated by the parties are unable, within ten days after their failure to agree upon an award, to agree upon the selection of such

neutral person, either member of the board may request the Mediation Board to appoint such neutral person and upon receipt of such request the Mediation Board shall promptly make such appointment. The neutral person so selected or appointed shall be compensated and reimbursed for expenses by the Mediation Board. Any two members of the board shall be competent to render an award. Such awards shall be final and binding upon both parties to the dispute and if in favor of the petitioner, shall direct the other party to comply therewith on or before the day, named. Compliance with such awards shall be enforcible by proceedings in the United States district courts in the same manner and subject to the same provisions that apply to proceedings for enforcement of compliance with awards of the Adjustment Board.

TITLE 45.—RAILROADS

CHAPTER 8.—RAILWAY LABOR

CARRIERS BY AIR

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45 USCS § 181 (2003)

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§ 181. Application of 45 USCS § 151, 152, 154-163 to carriers by air

All of the provisions of Title I of this Act [45 USCS §§ 151-163], except the provisions of section 3 thereof [45 USCS § 153], are extended to and shall cover every common carrier by air engaged in interstate or foreign commerce, and every carrier by air transporting mail for or under contract with the United States Government, and every air pilot or other person who performs any work as an employee or subordinate official of such carrier or carriers, subject to its or their continuing authority to supervise and direct the manner of rendition of his service.

TITLE 45.—RAILROADS

CHAPTER 8.—RAILWAY LABOR

CARRIERS BY AIR

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45 USCS § 184 (2003)

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§ 184. System, group, or regional boards of adjustment

The disputes between an employee or group of employees and a carrier or carriers by air growing out of grievances, or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on the date of approval of this Act [enacted April 10, 1936] before the National Labor Relations Board, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to an appropriate adjustment board, as hereinafter provided, with a full statement of the facts and supporting data bearing upon the disputes.

It shall be the duty of every carrier and of its employees, acting through their representatives, selected in accordance with the provisions of this title [45 USCS §§ 181 *et seq.*] to establish a board of adjustment of jurisdiction not exceeding the jurisdiction which may be lawfully exercised by system, group, or regional boards of adjustment, under the authority of section 3, Title I, of this Act [45 USCS § 153].

Such boards of adjustment may be established by agreement between employees and carriers either on any individual carrier, or system, or group of carriers by air and any class or classes of its or their employees; or pending the establishment of a permanent National Board of Adjustment as hereinafter provided. Nothing in this Act shall prevent said carriers by

air, or any class or classes of their employees, both acting through their representatives selected in accordance with provisions of this title [45 USCS §§ 181 *et seq.*], from mutually agreeing to the establishment of a National Board of Adjustment of temporary duration and of similar limited jurisdiction.